IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 30305

STATE OF IDAHO,	)	**2006 Opinion No. 3**
	)	
Plaintiff-Appellant,	)	**Filed: January 9, 2006**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
SCOTT HUNTER CONANT,	)	
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Order of the district court suppressing evidence, affirmed.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudè, Deputy Attorney General, Boise, for appellant. Rebekah A. Cudè argued.

Charles E. Kovis, Moscow, for respondent.

GUTIERREZ, Judge

The state appeals from the district court's order suppressing evidence. The state asserts that the district court erred in its ruling that I.C. § 23-943A requires reasonable suspicion that a person is under the age of twenty-one before an officer can detain and then arrest for non-compliance in producing identification. We affirm.

I.
FACTUAL AND PROCEDURAL SUMMARY

In the early morning hours on a winter weekend, outside a Moscow nightclub, an officer of the Moscow Police Department was sitting in his squad car speaking with another officer who was in a second patrol vehicle. The officers' vehicles were positioned with one southbound and one northbound, so as to allow a face-to-face, door-to-door conversation. While the officers paused to speak with each other, Scott Hunter Conant approached the nightclub on foot. Conant was accompanied by a friend, Robert Feeley. These men, along with a third, had split two pitchers of beer at another nightclub before deciding to go to this nightclub. Upon observing the

police vehicles, Conant, using vulgarities, began loudly berating the officers for blocking the street. In response, one of the officers got on his public address speaker and twice directed Conant to come talk to him. Instead, Conant proceeded towards the entrance of the nightclub and the officer followed him. Inside the building, the officer contacted Conant and directed him to go outside. Once outside, the officer asked to see Conant's identification, but Conant refused to present it.

Conant was arrested for failing to provide identification, pursuant to Idaho Code § 23-943A, which requires individuals to present identification upon request of a peace officer when he or she is on a premises licensed to sell liquor by the drink at retail, or licensed to sell beer for consumption on the premises. A booking search of Conant yielded a baggie containing just over four grams of methamphetamine. The state charged Conant with possession of methamphetamine, I.C. § 37-2707(d)(2), as well as failing to provide identification indicating his age. Conant filed a motion to suppress all evidence seized pursuant to his arrest, which the district court granted. The district court ruled that there was no legal basis under I.C. § 23-943A for the arrest and search of Conant. This appeal followed.

II.
STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

III.
ANALYSIS

The district court relied on both statutory and constitutional bases for granting Conant's motion to suppress. We need only address the constitutional basis. The question presented is whether the United States and Idaho constitutions require an officer to reasonably suspect a person is underage before requesting identification pursuant to I.C. § 23-943A.

That statute provides:

> It shall be a misdemeanor for any person to refuse to present identification indicating age, when requested by a peace officer of the state of Idaho when: (a) he or she shall possess, purchase, attempt to purchase or consume alcoholic liquor, as defined by section 23-105, Idaho Code; or (b) he or she shall possess, purchase, attempt to purchase or consume beer as defined by section 23-1001, Idaho Code; or (c) he or she is on a premises licensed to sell liquor by the drink at retail, or licensed to sell beer for consumption on the premises.

It is well established that contacts between law enforcement and the citizenry fall within three general categories: mere encounter, investigative detention and custodial detention or arrest. *State v. Knapp*, 120 Idaho 343, 346, 815 P.2d 1083, 1086 (Ct. App. 1991); *State v. Zapp*, 108 Idaho 723, 726-27, 701 P.2d 671, 674-75 (Ct. App. 1985). A mere encounter (or request for information) need not be supported by any level of suspicion, but also carries no official compulsion to stop or respond. *Florida v. Bostick*, 501 U.S. 429 (1991); *Florida v. Rodriquez*, 469 U.S. 1 (1984); *I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984); *Florida v. Royer*, 460 U.S. 491 (1983); *United States v. Mendenhall*, 446 U.S. 544 (1980); *State v. Landreth*, 139 Idaho 986, 990, 88 P.3d 1226, 1230 (Ct. App. 2004); *State v. Zubizareta*, 122 Idaho 823, 826-27, 839 P.2d 1237, 1240-41 (Ct. App. 1992). An investigative detention must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. *State v. DuValt*, 131 Idaho 550, 553-54, 961 P.2d 641, 644-45 (1998); *Wilson v. Idaho Transportation Dept.*, 136 Idaho 270, 274, 32 P.3d 164, 168 (Ct. App. 2001); *State v. Parkinson*, 135 Idaho 357, 361-62, 17 P.3d 301, 305-06 (Ct. App. 2000); *State v. Larson*, 135 Idaho 99, 101, 15 P.3d 334, 336 (Ct. App. 2000); *State v. Frank*, 133 Idaho 364, 367-68, 986 P.2d 1030, 1033-34 (Ct. App. 1999). An arrest or custodial detention must be supported by probable cause. I.C. § 19-603; *State v. Autheman*, 47 Idaho 328, 332, 274 P. 805, 807 (1929); *State v. Gibson*, 141 Idaho 277, 282-84, 108 P.3d 424, 429-31 (Ct. App. 2005); *State v. Cook*, 106 Idaho 209, 220, 677 P.2d 522, 533 (Ct. App. 1984).

The parties do not contest that the facts of this case go beyond a mere encounter and involve an investigatory detention because I.C. § 23-943A compels an individual to produce identification at an officer's request. The individual does not have a choice to refuse the request and walk away. Thus, the issue presented is whether the police had reasonable suspicion to justify that investigatory detention.

In *Brown v. Texas*, 443 U.S. 47 (1979), the United States Supreme Court held that a statute requiring citizens to give their name and address to police *upon demand* was unconstitutionally applied. In *Brown*, the officers who approached Brown walking in an alley in an area with a high incidence of drug traffic did not claim to suspect Brown of any specific misconduct. The Court held that requiring Brown to identify himself violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe Brown was engaged or had engaged in criminal conduct. *Id.* at 52.

In *Ibarra v. Illinois*, 444 U.S. 85 (1979), the United States Supreme Court considered whether application of a statute that authorized police officers to detain and search any person found on the premises being searched pursuant to warrant violated the Fourth Amendment. The police officers in *Ybarra* possessed a valid warrant to search the tavern Ybarra happened to be patronizing. The officers did not suspect Ybarra of any misconduct and knew nothing about him, except that he was present, along with other patrons, in a public tavern at a time when the police had reason to believe the bartender would have heroin for sale. In concluding that the Illinois statute was unconstitutionally applied when officers conducted a pat-down search of Ybarra, the Court stated that, although the officers had authority to search the premises and the bartender, the police had no authority whatsoever to invade the constitutional protections possessed individually by the tavern's customers. *Id.* at 91-92.

In deciding whether the application of I.C. § 23-943A was constitutionally applied here, we consider the analysis undertaken in *State v. Osborne*, 121 Idaho 520, 826, P.2d 481 (Ct. App. 1991). That case involved a different statute, I.C. § 49-316, mandating that every licensed driver possess the license while driving and that the driver "shall, upon demand, surrender the driver's license into the hands of a peace officer for his inspection." In *Osborne*, we concluded that a field officer is not permitted to randomly detain motorists for the purpose of conducting routine license checks, even where the officer comes upon an already parked vehicle. *Id.* at 525, 826 P.2d at 486. We noted the United States Supreme Court's warning that:

> To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion "would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches."
> . . . .

> The "grave danger" of abuse of discretion does not disappear simply because the automobile is *subject to state regulation* resulting in numerous instances of police-citizen contact. . . . *"[I]f the government intrudes . . . the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards.*"

Delaware v. Prouse, 440 U.S. 648, 661-62 (1979) (emphasis added) (citations omitted).

Thus, in *Osborne*, we concluded that the standardless and unconstrained law enforcement discretion involved in random license checks of motorists is incompatible with the Fourth Amendment's guarantees. We agreed that detaining an automobile driver and passengers for the purpose of checking the driver's license must, *at least*, be founded on an articulable and reasonable suspicion that the motorist is unlicensed, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law.[1] *Osborne*, 121 Idaho at 525, 826, P.2d at 486. As recognized in *Prouse*, "people are not shorn of all Fourth Amendment protections when they step from their homes onto the public sidewalks." *Prouse*, 440 U.S. at 663. Nor are they shorn of those interests when they step from the sidewalks into a Moscow nightclub. Because the "Fourth and Fourteenth Amendments protect the legitimate expectations of privacy of persons, not places," each patron who walks into a nightclub remains "clothed with constitutional protection" against unreasonable seizure. *See Ybarra*, 444 U.S. at 91.

In the instant case, the district court pointed out that the purpose of Section 23-943A is the prevention of underage drinking and the loitering of minors in and around barrooms. That observation is correct. The purpose of section 23-943A, as expressed in I.C. § 23-941, is:

> . . . to restrict persons under the ages herein specified from entering, remaining in or loitering in or about certain places, as herein defined, which are operated and commonly known as taverns, barrooms, taprooms and cocktail lounges and which do not come within the definition of restaurant as herein contained and are not otherwise expressly exempted from the restrictions herein contained.

The state contends that the intrusion is minimal when individuals are required to produce identification indicating age when engaged in activities related to the heavily-regulated alcohol industry. The state suggests that an officer need not possess reasonable, articulable suspicion that an individual, engaged in such activities, is under the age of twenty-one years when asked

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[1] The United States Supreme Court has observed, however, that routine checks are permissible under the federal constitution as part of some systematic procedure which is less intrusive or which does not involve the field officer's unconstrained exercise of discretion. *Prouse*, 440 U.S. at 663.

for identification indicating age. We conclude, however, that the intrusion here is at least as substantial as the intrusion found unconstitutional in *Osborne.* It is well established that motor vehicle licensure and operation is heavily regulated. *Prouse*, 440 U.S. at 661-62. Whereas every driver must be licensed to drive, any person over the age of twenty-one may legally consume alcohol.

At the hearing on the motion to suppress, the state conceded that nothing in the record suggested that the officer thought Conant to be underage. Indeed, there is no evidence at all that the officer's decision to detain Conant was based on reasonable suspicion. The district court implicitly found that the officer detained Conant because Conant had taunted the officer and refused, as was his right, to comply with the officer's public address broadcast request for Conant to come over to his vehicle. The district court properly viewed I.C. § 23-943A as limited to intrusions that advance the public interest in preventing underage consumption of alcohol and thus, reasonable suspicion that the individual is under twenty-one is required.

IV.
CONCLUSION

The district court did not err in determining that the purpose of I.C. § 23-943A, as confirmed by I.C. § 23-941, is the prevention of underage drinking and loitering around barrooms and the like. Nor did the district court err in finding that police action authorized by Section 23-943A must be supported by a reasonable suspicion that the person is underage. There is no evidence in the record that the officer's request for Conant's identification was so supported. The district court's order granting Conant's motion to suppress is therefore affirmed.

Chief Judge PERRY and Judge LANSING **CONCUR**.